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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,131	02/06/2007	Alexander Schmidt-Forst	18227 (27839-1549)	9398

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EXAMINER
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COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1782

NOTIFICATION DATE	DELIVERY MODE
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04/05/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USpatents@armstrongteasdale.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/561,131	<b>Applicant(s)</b> SCHMIDT-FORST ET AL.	
	<b>Examiner</b> Elizabeth M. Cole	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/12/09; 7/23/09; 6/1/06; 4/3/06</u>                         | 6) <input type="checkbox"/> Other: _____                          |

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1. Applicant's election without traverse of Group II, claims 20-45 in the reply filed on 1/19/10 is acknowledged.
2. Claims 41-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 41 provides for the use of a short fiber, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 41 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

4. Claims 42-45 are included as dependent upon claim 41.
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Chapman, Jr., U.S. Patent No. 3,617,439. Chapman discloses an airlaid sheet made from short

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cellulosic fibers having a finish applied thereto. The finish is applied in amount of 0.1 to 2 percent. See abstract. Therefore, Chapman anticipates claim 20.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott, Jr. et al, U.S. Patent Application publication 2002/0032421 in view of Shah, U.S. Patent No. 4,573,376. Scott, Jr. discloses an absorbent airlaid nonwoven fabric comprising short cellulosic fibers such as cotton linters. See paragraphs 0014 and 0021, and examples. The airlaid fabric further comprises binder fibers, which are preferably bicomponent binder fibers having a polyester core and a polyolefin sheath. See paragraph 0025. The short fibers are present in an amount of over 70% and preferably in ratios of 80/20 to 99/1 cotton to thermoplastic fibers. See paragraph 0033. The airlaid may further comprise additional components such as superabsorbent materials. See paragraph 0029. Scott defines short fibers as having a length of 0.5-12 mm, which encompasses the claimed short fiber lengths. See paragraph 0014. Scott, Jr. et al differs from the claimed invention because it does not disclose employing short rayon, (viscose), fibers and does not teach applying a finish to the short fibers. Shah teaches that cotton and rayon fibers which are intended to be used in forming absorbent pads can be treated with less than 1 percent and preferably about up to 0.5% of a finish such as a polyoxylethylene sorbitan monoester of a higher fatty acid in order to improve

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the absorbency of the finished product. See col. 3, lines 35-55. Therefore, it would have been obvious to have applied a finish as taught by Shah to the fibers of Scott, in order to further enhance the absorbency of the finished product of Scott.

9. Claims 27-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott, Jr. et al, in view of Shah as applied to claims above, and further in view of Agyapong et al, U.S. Patent No. 6,554,814. Scott discloses an airlaid nonwoven as set forth above. Scott differs from the claimed invention because it does not specifically disclose employing rayon fibers or multi-limbed rayon fibers to form the airlaid fabric. However, Agyapong teaches at col. 7, lines 15-40, that rayon fibers and trilobal rayon fibers can be used instead of or in mixture with short cotton fibers to form absorbent articles. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed rayon and/or trilobal rayon fibers in the invention of Scott in addition to or instead of the short cotton fibers, in view of their art recognized suitability for this purpose. With regard to the particularly claimed fiber dtex for the binder fibers and cellulosic fibers, it would have been obvious to have selected fiber dtex in order to form a fabric having the desired absorbency and strength, (see paragraph 0024 of Scott which relates fiber length to tenacity of the nonwoven). Further, since Scott teaches that short fibers may be used without excessive dust off problems due to the use of the binder fibers, the person of ordinary skill in the art would have been able to employ the less expensive shorter rayon fibers in the invention of Scott, (see paragraph 0015 of Scott). With regard to the claimed absorbency, Agyapong teaches that absorbencies of from less than 6g/g to up to about 15 g/g are

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known to be useful in the art of absorbency catamenial devices. See paragraph 8, line 58 – col. 9, line 8. therefore, it would have been obvious to have controlled the absorbency of the product of Scott through the selection of the various components, finishes and additives, which produced an absorbent product having the desired absorbencies. It is noted that the Scott, Shah and Agyapong references are all drawn to absorbent hygiene products such as tampons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

The examiner's supervisor Rena Dye may be reached at (571) 272-3186.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794

e.m.c.